

DEC 23 2005

REMARKS

[0001] Claims 1-36 are pending in the case. Claims 1-2, 5-13, and 16-36 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication 2003/0014667 to Kolichtchak, *et al.* (hereinafter "Kolichtchak"). Claims 3, 4, and 14-15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kolichtchak.

REJECTION OF CLAIMS 1-2, 5-13, AND 16-36 UNDER 35 U.S.C. §102(e)

[0002] The Examiner rejected independent claim 1 under 35 U.S.C. §102(e) as being anticipated by Kolichtchak. This rejection is respectfully traversed.

[0003] It is well settled that under 35 U.S.C. § 102 that "an invention is anticipated if... all the claim limitations [are] shown in a single prior art reference. Every element of the claimed invention must be literally present, arranged as in the claim. The identical invention must be shown in as complete detail as is contained in the patent claim." *Richardson v. Suzuki Motor Co., Ltd.*, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Therefore, only if each limitation is literally disclosed by the prior art reference is the claim anticipated.

[0004] Kolichtchak teaches a system for handling page faults and a related method for defending against buffer overflow attacks. *See* Abstract. Kolichtchak is concerned with the avoidance of running "malicious code" and a method of terminating the method and logging the attempt. *See* Paragraph 0032, lines 2 and 3. Additionally, Kolichtchak discloses a system comprising memory, a plurality of pages held in memory, an instruction lookaside buffer, a first data translation lookaside buffer, and various other memory based software handlers associated with memory pages.

[0005] Pages of memory, as is well known to those skilled in the art, are the smallest unit of memory handled by an operating system. Kolichtchak, therefore, describes a system for

handling executable code that attempts a buffer overflow attack as a result of page faults. *See* Abstract. Furthermore, Kolichtchak states, “[b]roadly speaking, the method 400 detects and possibly suppresses user mode programs that attempt to execute from a writable page.” *See* Paragraph 0028, lines 3-5. The Office Action correctly depicts the system as taught by Kolichtchak in the first paragraph of item 3.

[0006] However, Claim 1 recites, in pertinent part (emphasis added),

a **communications module** configured to receive a directive to transition library management functions from a **first library manager** to a **second library manager**, the communications module further configured to communicate with the first library manager, the second library manager, and a **host computer**.

a **control module** configured to direct the first library manager to reject data transaction commands while maintaining the storage device in a state responsive to data transaction actions; also suspend the library management function of the first library manager; and activate the library management function of the second library manager.

[0007] The claimed invention describes an apparatus and a system for switching library managers. Mainframe computers are required to store immense amounts of data, often amounts of data in the order of hundreds and/or thousands of terabytes. Mainframe computers store this data in large data libraries. These libraries usually are made up of hard disk drives, tape drives, and optical storage drives. *See* page 2, lines 13-16 of the claimed invention. These mainframe computers may have multiple data libraries and therefore require at least one library manager to coordinate accessing the data. Additionally, the mainframe computer may comprise a plurality of library managers.

[0008] The present invention claims a communication module that receives a directive or

command to transition management functions from a first library manager to a second library manager. During this transition, a control module rejects incoming data transaction commands, or read/write requests, while suspending library management functions of the first library manager. The control module also activates the management functions of the second library manager.

[0009] Kolichtchak does not teach, disclose, reference, infer, allude, mention, or in any way dream about a system that manages data libraries comprising multiple hard disk drives, tape drives, or optical drives. Furthermore, Kolichtchak does not disclose any of the claimed elements of independent claim, including the communication module, the first and second library managers, and the control module.

[0010] Therefore, Applicants respectfully submit that independent claim 1 is patentable over Kolichtchak. Applicants also request that the rejection to independent claim 1 under 35 U.S.C. 102(e) be withdrawn. Subsequently, dependent claims 2, and 5-9 are patentable for at least the same reasons as independent claim 1 and further for depending from an allowable claim.

[0011] Regarding independent claim 10 and dependent claims 11, again, the Office Action fails to literally identify any of the claimed elements in the prior art. Specifically, the Office Action fails to identify a transition manager, and a library manager (first or second). Therefore, Applicants request the rejection of independent claim 10 be removed. Subsequently, dependent claim 11 is also in condition for prompt allowance.

[0012] Independent claim 12, states in pertinent part, "suspending library management functions of a first managing means; and means for activating the library management function of a second managing means." Again, the Office Action does not identify every element of the claim. Every element must be literally present, arranged as in the claim, in order to support a rejection under 35 U.S.C. 102(e). *See* MPEP § 2131. Specifically, no mention is made of

managing means for managing a library. Therefore, Applicants request the removal of the §102(e) rejecting with regard to independent claim 12. Subsequently, dependent claim 13 is likewise in condition for prompt allowance.

[0013] With respect to independent claims 19 and 24, each and every element of the claims is not found in Kolichtchak. Specifically, as discussed previously, Kolichtchak lacks disclosure of a library management system. More specifically, Kolichtchak does not disclose a first library manager, a second library manager, methods for suspending the actions of the library managers, transitioning management functions from one library manager to another library manager, or activating the library management functions of the second library manager. Without the disclosure of the combination of the above elements, the rejection under 35 U.S.C. § 102(e) to Kolichtchak is improper. Therefore, Applicants request the removal of the rejection under 35 U.S.C. § 102(e) with regard to claims 1-2, 5-13, and 16-36.

REJECTION OF CLAIMS 3, 4, and 14-15 UNDER 35 U.S.C. §103(a)

[0014] The Examiner rejected claims 3, 4, and 14-15 as being unpatentable under 35 U.S.C. §103(a) to Kolichtchak. Applicants respectfully disagree. The examiner bears the initial burden of establishing a *prima facie* case of obviousness. *See* MPEP § 2142. To establish a *prima facie* case of obviousness, the combination of the prior art references must teach or suggest all the claim limitations. *See* MPEP § 2142.

[0015] If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. *See* MPEP §2143.03. The Office Action does not identify independent claim 1 or independent claim 12 as being obvious, therefore Applicants respectfully submit that claims 3, 4, and 14 are allowable for depending from nonobvious independent claims.

[0016] It is well known that in order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2142 under the heading "ESTABLISHING A *PRIMA FACIE* CASE OF OBVIOUSNESS."

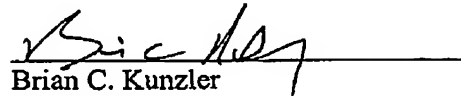
[0017] The examiner bears the initial burden of providing a motivation or suggestion to combine the references. In pertinent part, MPEP §2142 states, "[t]o support the conclusion that the claimed invention is directed to obvious subject matter, either the references must **expressly or impliedly suggest** the claimed invention or the examiner must **present a convincing line of reasoning** as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references (emphasis added)." Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). Applicants assert that the Office Action neither demonstrates how the reference "expressly or impliedly suggest" the invention nor presents "a convincing line of reasoning" as to why the invention would be found obvious.

[0018] Specifically, the Office Action directs its argument towards "a system that perform scalar and vector memory data accesses." The Office Action further discusses how one of ordinary skill in the art would have been motivated to use Kolichtchak's teachings to combine buffer overflow protection with vector and scalar memory accesses to provide accuracy and data protection. However, independent claim 15 discloses a system comprising first and second

library managers, storage devices, and a transition module. Not one of the claimed elements is expressly or impliedly referenced or suggested. The rejection of claim 15 under 35 U.S.C. § 103(a) is therefore improper, and Applicants request the removal of the rejection.

[0019] In view of the foregoing, Applicant submits that the application is in condition for immediate allowance. In the event any questions remain, the Examiner is respectfully requested to initiate a telephone conference with the undersigned.

Respectfully submitted,


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